

Exhibit D

**Hogan
Lovells**

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In advance by email:

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By courier:

Splunk Inc.
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Our ref 1564135
File no. 1JD776.003884

12 February 2020

and

Splunk Services Germany GmbH
Salvatorplatz 3
80333 München
Germany

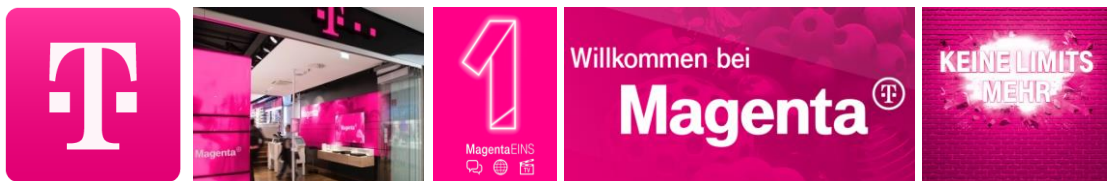
UNLAWFUL USE OF MAGENTA BY SPLUNK INC. – DEADLINE TO REPLY: 20 FEBRUARY 2020

Dear Sir or Madam,

We are contacting you on behalf of our client, Deutsche Telekom AG (DTAG), established in Bonn, Germany, with respect to your use of the colour Magenta in connection with your company and your software, both called "Splunk", as well as the associated website www.splunk.com and the Splunk app. Since the direct contact between DTAG and Splunk Inc. did not lead to a fruitful exchange, we as lawyers now write to you.

1. As you may know, DTAG is one of the world's leading telecommunications and information technology companies with a presence in around fifty countries worldwide. The colour Magenta is the core element of DTAG's corporate identity and one for which it is very well-known. Our client, as well as its affiliated companies, uses Magenta as a distinctive sign for its entire range of goods and services. Due to the intensive use of the colour Magenta in all company communications and in all advertising materials in Germany, elsewhere in the EU and worldwide, the colour Magenta has become a unique and well-known identifier for the goods and services of DTAG.

The intensive use of Magenta by DTAG is illustrated by the following examples:



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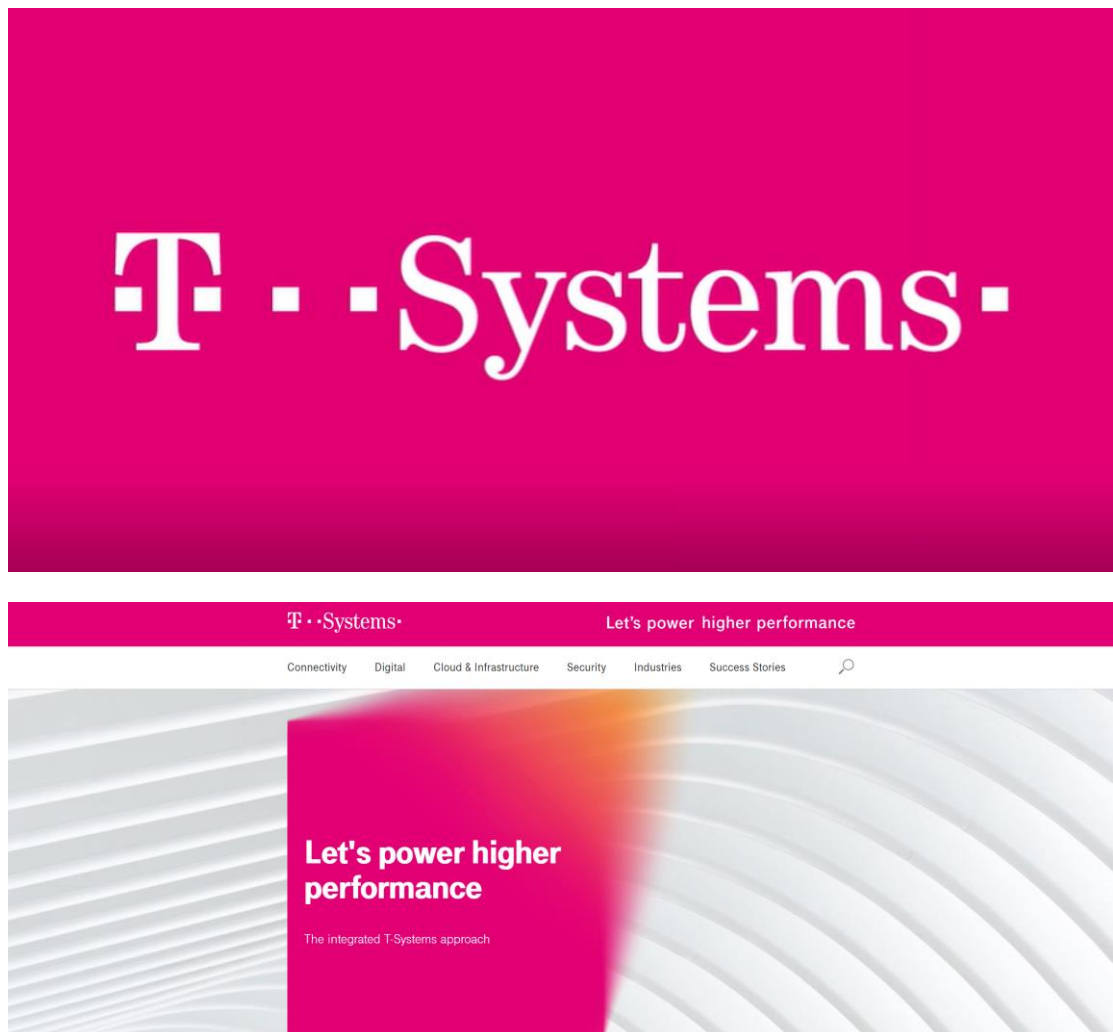
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2. DTAG and its affiliates offer a wide range of telecommunication and information technology products to private and corporate customers in Germany, other countries of the EU and worldwide.
3. As you probably know, one of the best known subsidiaries of DTAG is T-Systems. With locations in over 20 countries, 37,500 employees, and an external turnover of 6.9 billion euros (2018), T-Systems is one of the world-leading cross-manufacturer digital service providers. T-Systems offers integrated solutions for corporate customers. T-Systems offers everything from one source: from secure operation of existing systems and conventional IT and telecommunication services to transformation into the cloud, including international networks. From demand-oriented infrastructure, platforms, and software, down to new business models and innovation projects in the Internet of Things. The basis for this is the global reach of landline and mobile communications, high-security data centers, a comprehensive cloud ecosystem with standardized platforms, worldwide partnerships, and the highest security.

For more information, please visit the homepage of T-Systems: www.t-systems.com.

T-Systems uses Magenta as intensively as DTAG, as the following examples illustrate:



4. DTAG owns various trademark registrations worldwide to protect its Magenta colour trademark, including the European Union trademark registration EUTM 212787 and German trademark registrations DE 39864846 and DE 39552630, which inter alia cover

- *"computer programming",*
- *"Database services, namely collecting and delivering data, messages and information" as well as*
- *"Rental of data processing equipment and computers"*

in class 42 of the nice classification.

DTAG's Magenta colour mark is depicted below:



We enclose copies of these registrations for your reference.

Therefore, the colour Magenta is protected for DTAG in accordance with Article 9 para 2 lit. a and lit. b of the Regulation on the European Union Trademark as well as Section 14 para 2 no. 1 and no. 2 of the German Trademark Act. Moreover, the colour Magenta is protected as a business identifier pursuant to Section 5 para 2 and Section 15 para 2 and 3 of the German Trademark Act as well.

In addition, the colour Magenta enjoys protection as a trademark having a reputation according to Article 9 para 2 lit. c of the Regulation on the European Union Trademark and Section 14 para. 2 no. 3 of the German Trademark Act.

Finally, Magenta is a protected business identifier pursuant to Section 15 para. 2 and 3 of the German Trademark Act as well.

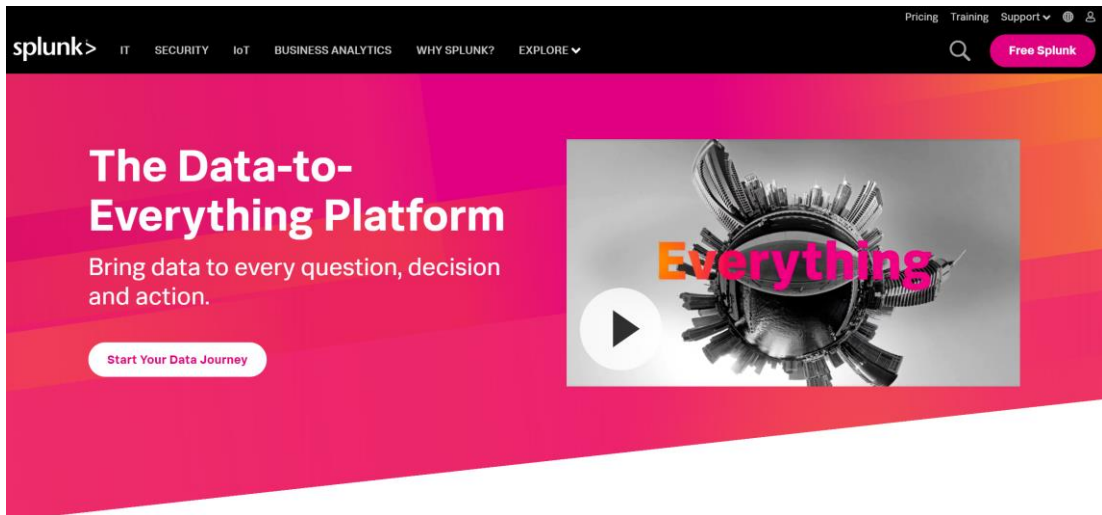
5. It has come to the attention of our client that Splunk Inc. (Splunk) uses intensively the colour Magenta (and barely noticeably Orange) to mark their goods and services.

As far as we know, Splunk produces software for searching, monitoring, and analysing machine-generated data. The software by Splunk, inter alia, seems to capture, index, and correlate real-time data in a searchable repository from which it can generate graphs, reports, alerts, dashboards, and visualizations. Therefore, Splunk seems to offer primarily database services, namely the collecting and delivering of data.

Splunk uses Magenta intensively on their website, for their app called "Splunk Mobile" as well as on social media. Furthermore, Magenta is also intensively used for brochures and other advertising measures online as well as offline.

The following examples demonstrate the dominant use of Magenta by Splunk:

- a) Website: www.splunk.com



- b) App icon: Splunk Mobile (iOS and Android)



iOS version

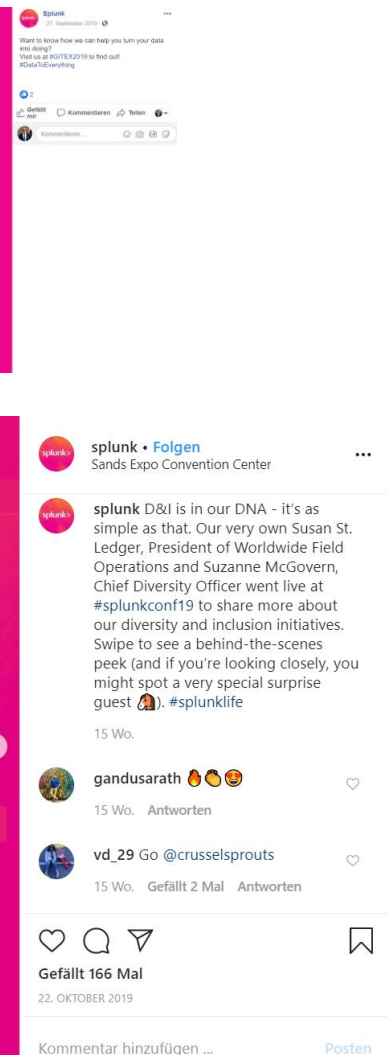


Android version

c) Social media: logo (Facebook, Twitter, Instagram, YouTube & LinkedIn)



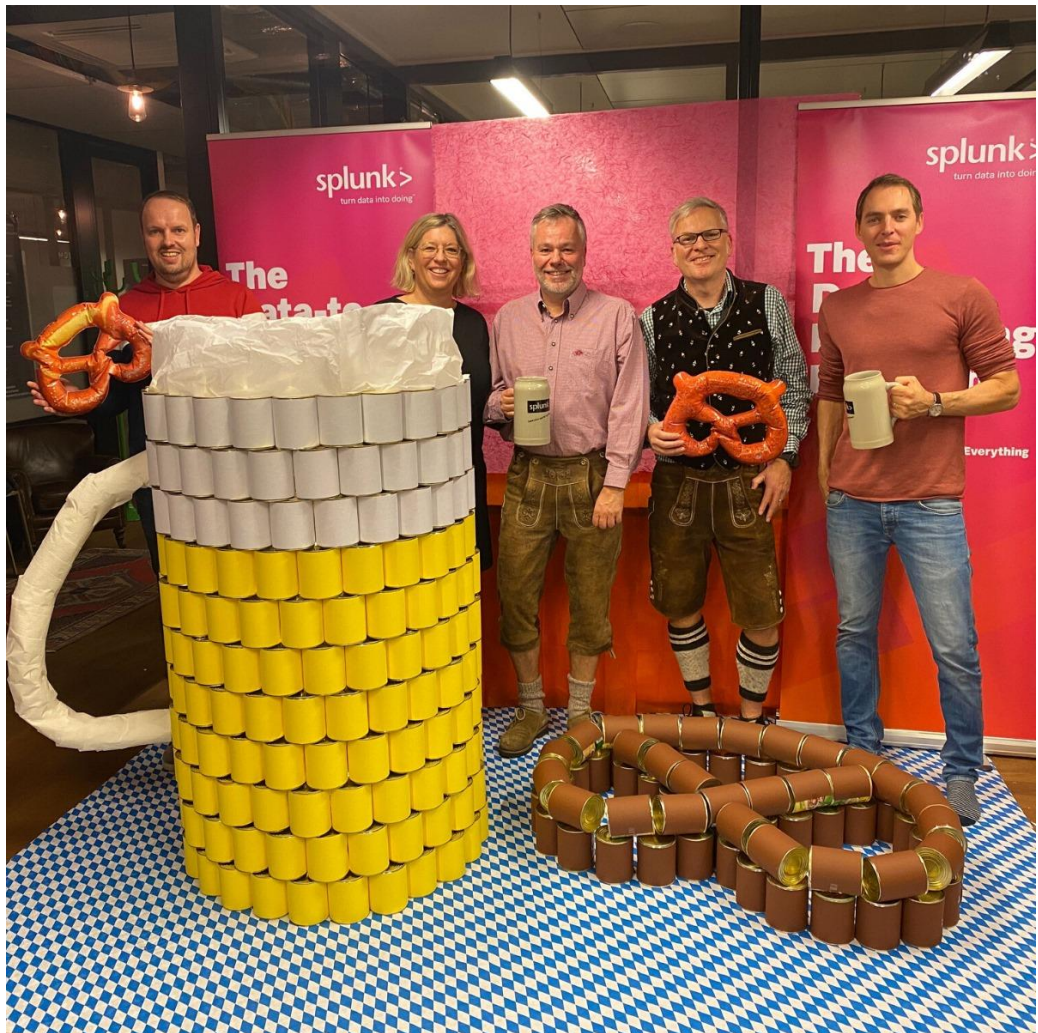
d) Social media: content (Facebook & Instagram)



e) Brochures (Splunk Prognosen für 2020 [in German])



f) Further advertising measures (found on the internet)



6. The use by Splunk of a colour identical to or at least confusingly similar to Magenta for the website and the app as well as on social media and for further advertising measures infringes our client's Magenta colour marks. In more detail:

- The use by Splunk of the colour Magenta or a highly similar colour creates a likelihood of confusion and therefore infringes DTAG's Magenta trademark rights pursuant to Article 9 para 2 lit. b of the Regulation on the European Union Trademark as well as Section 14 para 2 no. 2 of the German Trademark Act.
- Splunk uses Magenta as an indication of origin for their goods and services and not only for decorative purposes. This is obvious from the intensive, recurring and extremely prominent use of Magenta as well as from the fact that the Splunk logo can be found almost without exception on a background in Magenta. With regard to the logo, the general public generally perceives the colour of a corporate logo as a distinctive element of the corporate identity. This is true despite the minimal use of orange. At most, the use of orange has the character of a creative effect or suggests a cooperation with DTAG.
- The relevant public will not be able to distinguish the colour used by Splunk from the Magenta colour widely used by and protected for DTAG. In this regard, it has to be kept in mind that a consumer cannot compare both colours directly but has to rely on his memory (see CJEU, Decision of 5 May 2003, C- 104/01, par. 47 – *Libertel*).
- Moreover, Splunk uses Magenta for services which are identical or at least highly similar to the services that are protected by DTAG's Magenta marks. In addition, there is an obvious business overlap, since Splunk and our client both provide services in connection with the collecting and delivering of data (database services). Therefore, consumers will be misled that there is an organisational or economic connection between Splunk and our client.
- Furthermore, the Magenta colour marks enjoy a reputation in Germany and other countries of the European Union pursuant to Article 9 para 2 lit. c of the Regulation on the European Union Trademark and Section 14 para. 2 no. 3 of the German Trademark Act. The use by Splunk of the colour Magenta or a colour highly similar to Magenta takes unfair advantage of, and is detrimental to, the distinctive character and the repute of the Magenta trademarks.
- In addition, the use by Splunk of Magenta constitutes an infringement of our client's protected business identifier pursuant to Section 15 para. 2 and 3 of the German Trademark Act.
- With regard to the German trademarks, there is a necessary commercial effect, *inter alia* due to the fact that the website and the app are available in Germany.

7. The intensive use of the colour Magenta by Splunk raises our client's concerns. Our client is particularly concerned that Splunk is apparently aware of the fact that Magenta is a prior trademark of DTAG, but uses the colour anyway. In particular, Splunk uses generally the same website design and colouring for the different language versions of their website. Only the German website of Splunk has slightly less Magenta, as illustrated below. This suggests that Splunk knows exactly that Magenta is associated with DTAG.

Japanese



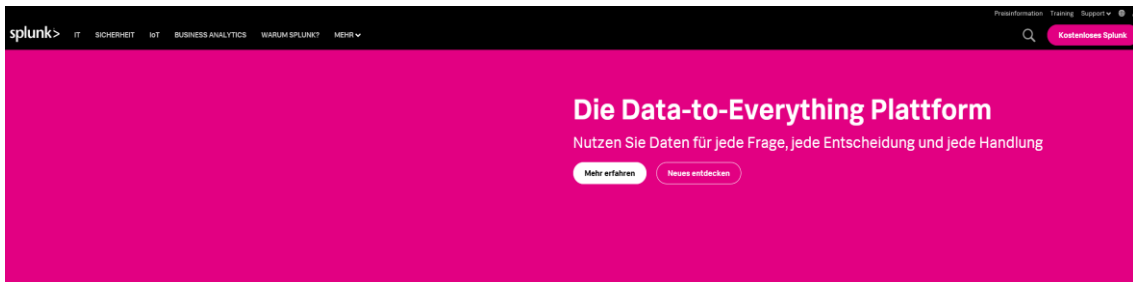
German



French



8. To make it worse, if you open the website of Splunk with the Internet Explorer, the website is nothing but Magenta, even in the German language version.



9. Furthermore, Splunk started to use Magenta only recently. Up to and including the year 2019, Splunk still used green and blue as their corporate colours, as illustrated below. We cannot see any other reason to change to Magenta, a colour that is widely known in the relevant market as a trademark of DTAG, than intending to make a conscious reference to DTAG.



10. As an owner of valuable intellectual property rights, DTAG has to defend the same in order to avoid any likelihood of confusion at the customer's end and any dilution of its trademarks. Therefore, our client is fully prepared to take all legal measures necessary before the competent courts in order to defend its valuable Magenta trademarks. In addition to cease and desist claims, our client would even have claims for information and damages.
11. Yet, our client would like to spare both sides the time and expanses of lengthy and costly court proceedings. Therefore, DTAG would prefer to settle this matter amicably.
12. We therefore request Splunk to immediately stop the contested colour use described above and declare in writing that Splunk will abstain from using the colour Magenta or confusingly similar colour shades to identify goods and services in relation to computer programming and database services in the future anywhere in the European Union. To this end, we have prepared the attached cease and desist declaration which we ask you to sign and send back to us by

20 February 2020.

Under German law, only such a declaration secured by a penalty is apt to sufficiently exclude the danger of recurrence. If we do not receive the requested declaration, we will advise our client to seek relief by the competent courts.

13. Please note that our client expressly reserves its right to take legal action against the use of Magenta by Splunk according to unfair competition law as well as based on US trademark law.

If you would like to discuss this matter over the phone, please feel free to contact us.

We are looking forward to hearing from you.

Yours sincerely

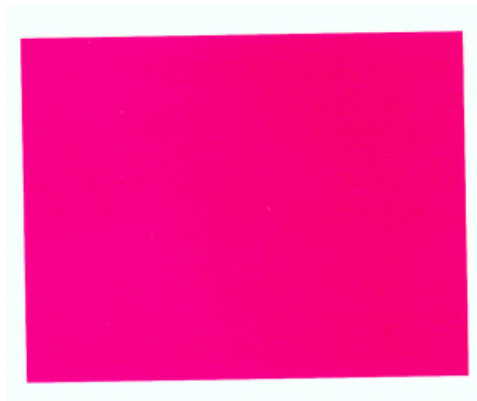


Mareike Hunfeld

Rechtsanwältin

Enclosures:

- European Union Trademark No. 212787
- German Trademark No.39864846
- German Trademark No. 39552630
- Cease and Desist Declaration

**Trademark****Trademark No** EM00212787**Legal status** Registered - cancellation pending**Language of application** First DE, Second EN**Type** Colour mark
Colour claimed**Entry date EUIPO** 10.04.1996**Filing date** 01.04.1996**Notification date** 24.01.2000**Registration date** 03.08.2000**Publication date** 18.09.2000**Expiry date** 01.04.2026**Renewal date** 07.05.2006**polymark date** polymark update 02.12.2019**Colours** Magenta (RAL 4010 telemagenta)**Nice classification** 38, 42**Vienna classification** 29.01.11, 29.01.99**Owner** Deutsche Telekom AG, Friedrich-Ebert-Allee 140, 53113 Bonn, DE**Agent** HOGAN LOVELLS INTERNATIONAL LLP, Alstertor 21, 20095 Hamburg, DE

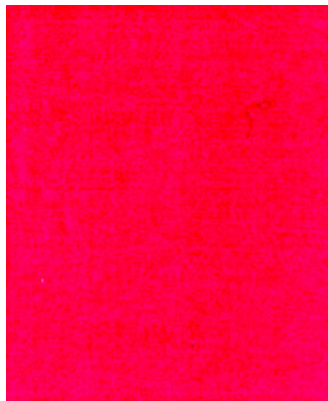
Goods & Services 38 Telecommunications; rental of telecommunication equipment; information about telecommunication; rental of message sending apparatus; telecommunications value-added services included in class 38, namely telecommunications services with above-average utility providers; telecommunication services for others; all the aforesaid services including related information and consultancy services; none of the aforementioned services including news agencies.

42 Designing installations and equipment for telecommunications.

History

Publ.Date	Bulletin	Text
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Publ.Date	Bulletin	Text
24.01.2000	2000/007	Part A. 1 - CTM applications published under Article 40 of the CTMR
18.09.2000	2000/074	Part B. 1 - Registrations with no amendments since the application was published
28.11.2003		Change of legal status to: Registration published
10.07.2006	2006/028	Part D. 1 - Renewals
12.03.2007	2007/010	Part C. 4.1 - Licences granted
02.04.2007	2007/013	Part C. 3.6 - Trade mark - International trade mark
16.04.2007	2007/015	Part C. 2.4 - Deletion of the representative
23.04.2007		Change of legal status to: Cancellation pending
02.07.2007	2007/030	Part C. 2.3 - Appointment of a new representative
27.08.2007	2007/045	Part C. 2.2 - Replacement of the representative
29.10.2007	2007/060	Part C. 2.1 - Representative - Change of name and professional address
05.11.2007	2007/061	Part B. 4.2 - Relative errors
05.05.2008	2008/018	Part C. 9.1 - Applications for revocation or for a declaration of invalidity
26.05.2008	2008/021	Part C. 9.1 - Applications for revocation or for a declaration of invalidity
18.08.2008	2008/033	Part C. 2.2 - Replacement of the representative
06.10.2008	2008/040	Part C. 9.1 - Applications for revocation or for a declaration of invalidity
02.02.2009	2009/004	Part C. 2.2 - Replacement of the representative
20.07.2009	2009/027	Part C. 9.3 - Counterclaims for revocation or for a declaration of invalidity
28.01.2010		Change of legal status to: Registration published
10.05.2010	2010/084	Part C. 2.1 - Representative - Change of name and professional address
02.08.2010	2010/141	Part C. 9.2 - Decisions on applications for revocation or for a declaration of invalidity
30.04.2012		Change of legal status to: Cancellation pending
18.02.2013	2013/034	Part C. 9.2 - Decisions on applications for revocation or for a declaration of invalidity
31.03.2016	2016/060	Part D. 1 - Renewals
16.01.2018	2018/010	Part C. 2.2 - Replacement of the representative
21.02.2018	2018/036	Part C. 3.2 - Trade mark - Partial surrender
25.10.2019	2019/204	Part C. 9.1 - Applications for revocation or for a declaration of invalidity

**Trademark****Trademark No** DE39864846**File number of application** 398648468**Legal status** Registered**Type** Colour mark
Coloured**Filing date** 04.11.1998**Registration date** 21.11.2002**Publication date** 03.01.2003**Renewal date** 01.12.2008**polymark date** polymark update 14.01.2019**Colours** magenta**Nice classification** 09, 16, 36, 37, 38, 41, 42**Vienna classification** 26.04.02, 29.01.01**Owner** Deutsche Telekom AG, 53113 Bonn, DE**Agent** Hogan Lovells International LLP, 20095 Hamburg, DE**Address of correspondence** Hogan Lovells International LLP, Alstertor 21, 20095 Hamburg**Goods & Services**

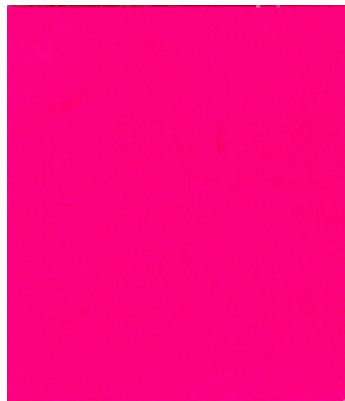
[English - computerised translation:]

Electric, electronic, optical, measuring, signaling, checking or teaching apparatus and instruments (included in class 9); Apparatus for recording, transmission, processing and reproduction of sound, images or data; machine-readable data record carriers; Mechanisms for coin-operated apparatus; Data processing equipment and computers; Printed matter, namely telephone directories and other directories for telecommunications; Finance; Real estate affairs; Building construction; Installation, maintenance and repair of telecommunications equipment; Telecommunications; Operating and rental of telecommunications equipment, in particular radio and television; Education; Training; Entertainment; Organization of sporting and cultural events; Publication of books, periodicals and other printed matter and related electronic media (including CD-ROMs and CD-I's); Computer programming; Database services, namely, leasing access time to and operating databases, and collecting and delivering data, messages and

information; Rental of data processing equipment and computers; Design and planning of telecommunications equipment

History

Publ.Date	Part	Text
03.01.2003	1a	Publication of registration Main class: 38
17.04.2003	8b	Change of agent details
23.05.2003	2a	Opposition period expired, no opposition
28.11.2003	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolute grounds for refusal of protection (§ 50 MarkenG)
09.01.2004	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolute grounds for refusal of protection (§ 50 MarkenG)
30.04.2004	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
01.10.2004	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolute grounds for refusal of protection (§ 50 MarkenG)
18.02.2005	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
26.10.2007	8b	Change of agent details Former name or address of agent: "Kanzlei Mayer, Brown, Rowe & Maw LLP, Frankfurt"
19.09.2008	8b	Change of agent details Former name or address of agent: "Kanzlei Mayer Brown LLP, Frankfurt"
29.05.2009	4	Renewal on 01.12.2008
11.06.2010	8b	Change of agent details Former name or address of agent: "Lovells LLP, 20095 Hamburg"
16.11.2012	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG
27.09.2013	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
11.01.2019	4	Renewal on 01.12.2018
	5g	Partial deletion upon declaration of the owner as from 01.12.2018

**Trademark**

Trademark No DE39552630

File number of application 395526302

Legal status Registered

Type Colour mark
Coloured

Filing date 27.12.1995

Registration date 12.09.2000

Publication date 07.12.2000

Renewal date 01.01.2006

polymark date polymark update 01.03.2019

Colours magenta

Nice classification 09, 16, 37, 38, 42

Vienna classification 26.04.05, 29.01.01

Owner Deutsche Telekom AG, 53113 Bonn, DE

Agent Hogan Lovells International LLP, 20095 Hamburg, DE

Address of correspondence Hogan Lovells International LLP, Alstertor 21, 20095 Hamburg

Goods & Services

[English - computerised translation:]

Apparatus for recording, transmission, processing and reproduction of sound, images or data for telecommunications; Printed matter, namely telephone directories and other directories for telecommunications; Installation, maintenance and repair of telecommunications equipment; Telecommunications; Rental of telecommunications equipment; Rental of apparatus for recording, transmission, processing and reproduction of sound, images or data for telecommunications; Rental of access time to databases in the form of providing access to the Internet, for others (online service and Internet service providers) and providing content accessible via the Internet; Design and planning of telecommunication facilities

History

Publ.Date	Part	Text
12.10.2000	1a	Publication of registration Main class: 38
07.12.2000	1ab	New publication of registration
	8e	Corrections, other changes "Die Veröffentlichung im Markenblatt Teil 1a aa) (Heft 41/2000) ist aufgrund der fehlerhaften Wiedergabe der Bildmarke ungültig. Mit der Neuveröffentlichung in Teil 1a bb) beginnt die Widerspruchsfrist erneut zu laufen."
05.04.2001	8e	Corrections, other changes "Der Bestandteil 'sonstige Markenform' tritt hinzu."
22.11.2002	8b	Change of agent details
21.11.2003	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolut grounds for refusal of protection (§ 50 MarkenG)
09.01.2004	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolut grounds for refusal of protection (§ 50 MarkenG)
30.04.2004	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
01.10.2004	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolut grounds for refusal of protection (§ 50 MarkenG)
18.02.2005	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
27.05.2005	4	Renewal on 01.01.2006
04.01.2008	2a	Opposition period expired, no opposition
	8b	Change of agent details
09.04.2010	8b	Change of agent details Former name or address of agent: "Mayer Brown LLP, 60323 Frankfurt"
11.06.2010	8b	Change of agent details Former name or address of agent: "Lovells LLP, 20095 Hamburg"
03.02.2012	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG
27.09.2013	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
04.09.2015	4	Renewal on 01.01.2016

CEASE AND DESIST DECLARATION

Splunk Inc., 250 Brannan Street, San Francisco, CA 94107, USA

as well as

Splunk Services Germany GmbH, Salvatorplatz 3, 80333 München, Germany

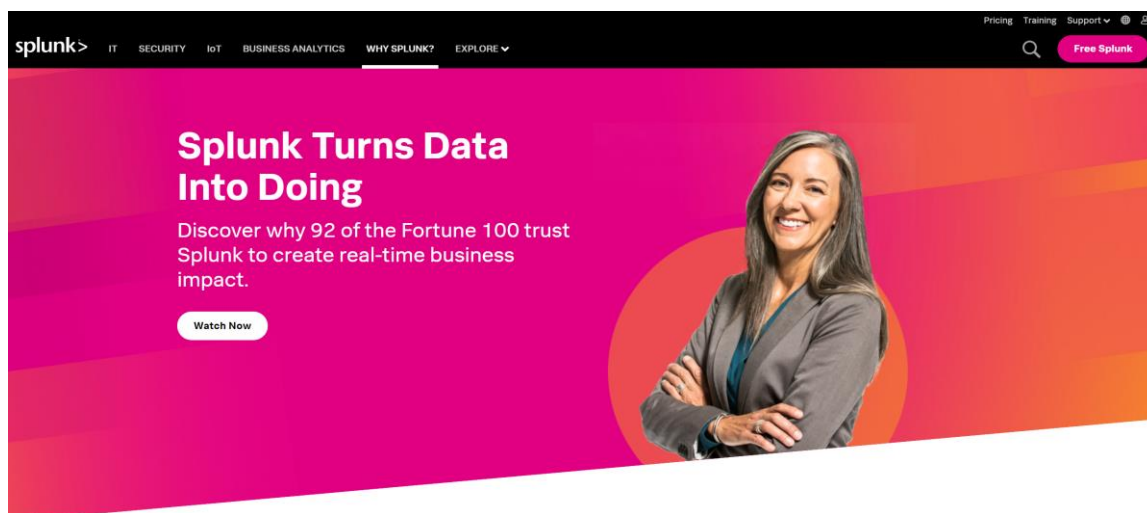
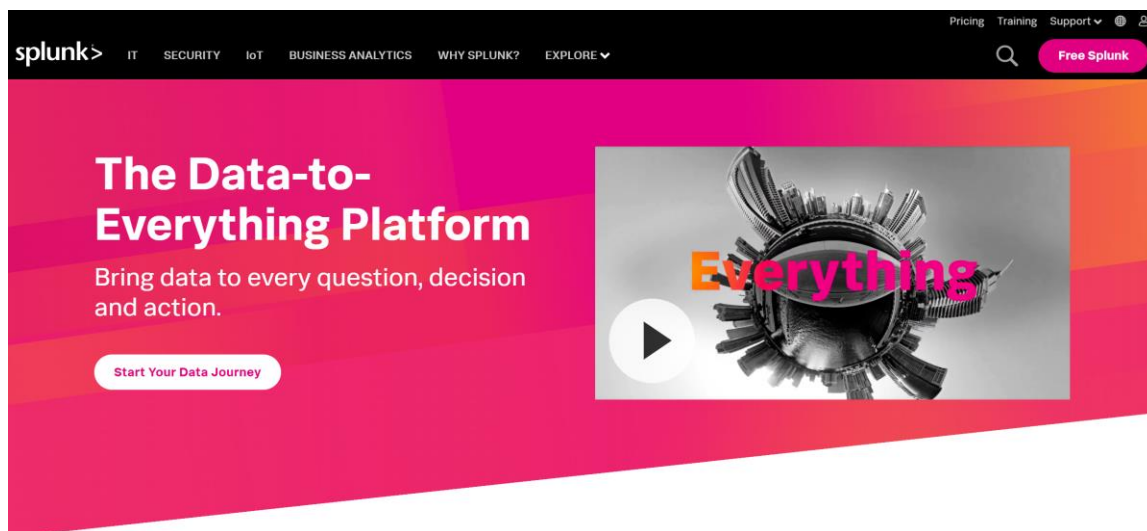
hereby undertake as joint and several debtors towards

Deutsche Telekom AG, Friedrich Ebert-Allee 140, 53113 Bonn, Germany

as follows:

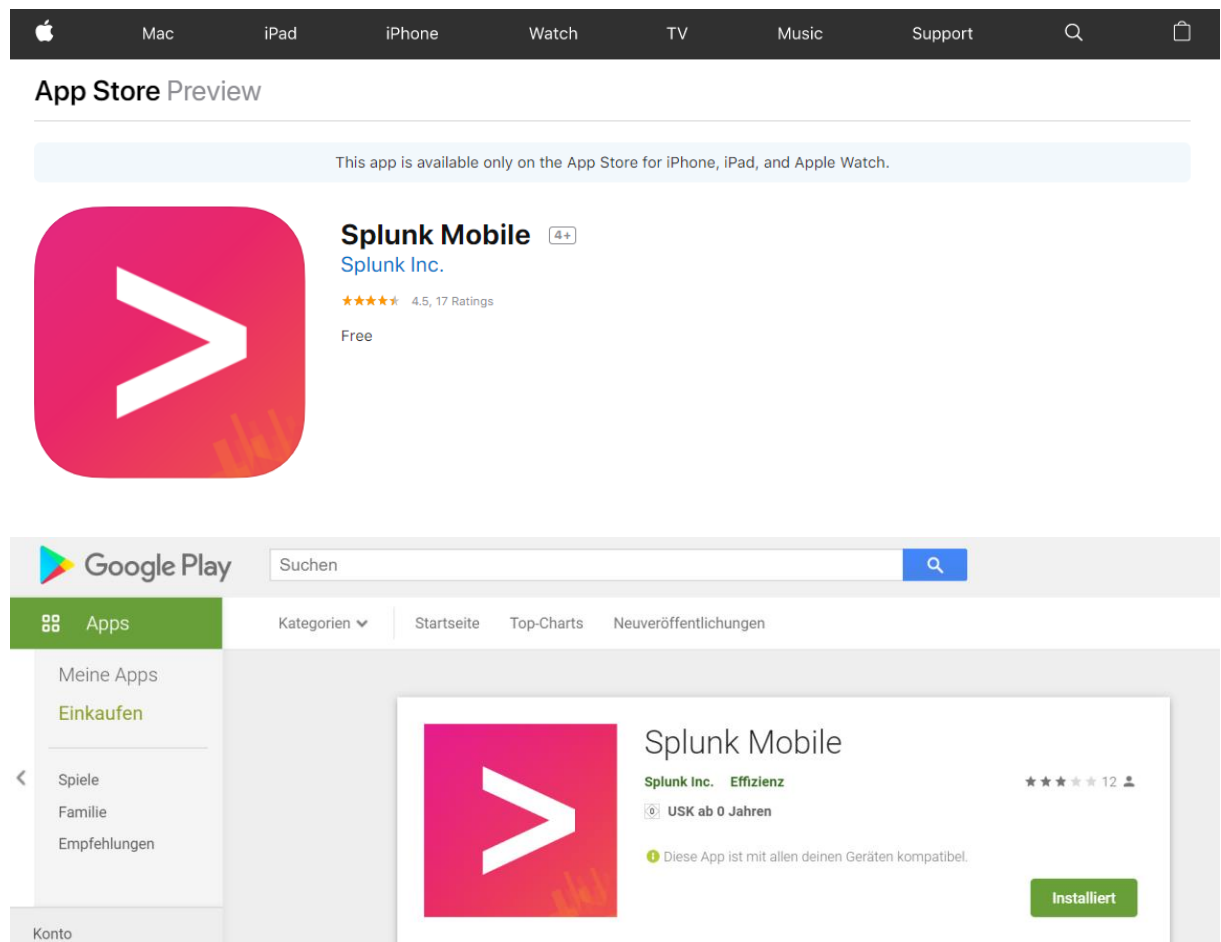
1. to cease and desist from using and/or allowing any subsidiary, affiliated or other company to use the colour Magenta or any colour similar thereto in the course of business for goods and services in relation to computer programming as well as the collecting and delivering of data (database services), including, but not limited to, software, such as the "Splunk" software, as well as apps, such as the "Splunk Mobile" app. This undertaking applies to all member states of the European Union, in particular, but not limited to the colour use as depicted below:

- a. Website (www.splunk.com)



- 2 -

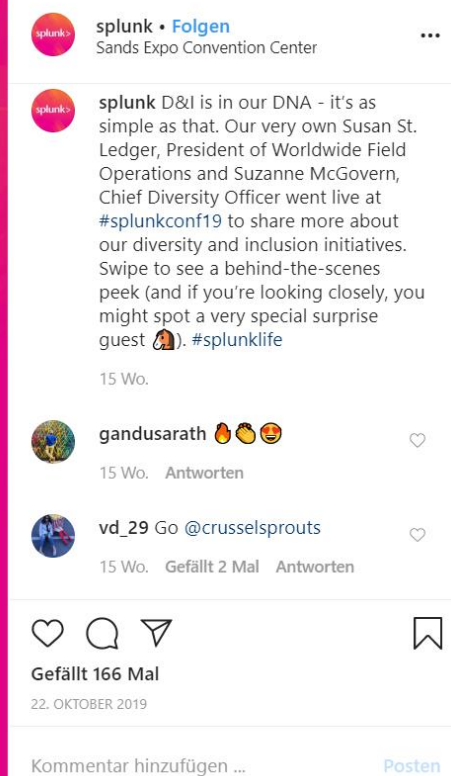
b. App (Splunk Mobile)



c. Social media: logo (Facebook, Twitter, Instagram, YouTube & LinkedIn)



d. Social media: content (Facebook & Instagram)



e. Brochures



f. Advertising measures offline as well as online



2. for each future infringement of clause 1 above, to pay to Deutsche Telekom AG a penalty of a reasonable amount, minimum 5,001 Euro, to be determined by Deutsche Telekom AG in each individual case. The amount of the penalty, if contested by Splunk Inc. or the Splunk Services Germany GmbH, shall be made subject to judicial review of the Regional Court Hamburg. The payment of such penalty is not to be understood as a waiver of any rights Deutsche Telekom AG may have and shall not be counted towards any damages to which Deutsche Telekom AG may be entitled.

All disputes arising in connection with this declaration shall be subject to German as well as applicable EU law and the jurisdiction of the competent courts of Hamburg.

Splunk Inc.**Splunk Services Germany GmbH**

.....
Place/date

.....
Place/date

.....
Print name

.....
Print name

.....
Function

.....
Function

.....
Signature

.....
Signature